

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**C.G., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
NEW YORK HARBOR HEALTHCARE  
SYSTEM, Brooklyn, NY, Employer**

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**Docket No. 16-1196  
Issued: March 6, 2017**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

*Before:*

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 18, 2016 appellant, through counsel, filed a timely appeal from a February 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that OWCP received additional evidence following the February 19, 2016 decision. The Board, however, may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing the additional evidence on appeal. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## **ISSUE**

The issue is whether appellant met her burden of proof to establish a recurrence of disability commencing March 26, 2014 causally related to the accepted January 8, 2012 employment injury.

## **FACTUAL HISTORY**

On January 9, 2012 appellant, then a 53-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2012 she sustained injuries to right hip, left wrist, right shoulder, and both knees when she slipped and fell in a hallway. She stopped work on January 9, 2012. OWCP accepted the claim for bilateral knee contusion and right hip contusion. Appellant returned to work on January 17, 2012 and accepted a modified full-time limited-duty job offer on January 23, 2012.

Appellant continued medical treatment for her accepted conditions throughout 2012 and 2013 with Dr. Michael F. Busch, a Board-certified orthopedic surgeon. In a report dated October 11, 2013, Dr. Busch related her examination findings and concluded that appellant was able to perform sedentary work, with standing limited to one hour per day.

In a March 26, 2014 employing establishment health unit note, Dr. Gloria I. Ihenacho, a Board-certified internist, related that appellant was seen on that date for bilateral knee pain due to her accepted 2012 slip and fall injury.

By report dated April 4, 2014, Laura Bielecki, a certified physician's assistant, diagnosed knee osteoarthritis and patellofemoral syndrome. She noted that appellant had indicated that her knee conditions were employment related. Ms. Bielecki released appellant to four days per week sedentary work, with no standing more than one hour per day.

On April 4 and August 8, 2014 appellant was seen by Dr. Busch. Dr. Busch noted that the date of injury was January 8, 2012 and that her knee pain had worsened. A physical examination revealed bilateral knee medial joint line tenderness, right knee trace effusion, left knee swelling, and mild left knee effusion. Dr. Busch observed full right knee range of motion, 0 degrees left knee extension, and 125 degrees flexion. In the April 4, 2014 report, he reviewed an x-ray interpretation, which showed narrow medial and lateral joint space and bone-on-bone femoral space.

Dr. Busch diagnosed patellofemoral syndrome and knee osteoarthritis in his April 4, and August 8, 2014 reports. He opined that appellant's preexisting conditions had been aggravated by the January 8, 2012 work injury and that she could work eight hours per day, four days per week in a sedentary position, with a maximum of one hour of standing per day.

In a September 5, 2014 report, Dr. Busch noted that he had been treating appellant since January 8, 2012 for her employment-related bilateral knee injury.

On March 30, 2015 appellant filed a claim for a recurrence of partial disability (Form CA-2a) for wage loss beginning March 26, 2014. She stated that she had been placed on limited-duty work and had been on leave without pay since April 4, 2014. Appellant related that while getting up from a sitting position on March 26, 2014 she felt her knees giving out, felt a lot of

pain, and heard a crunching sound. She noted that the accepted injury caused patella femur syndrome, which had worsened.

The record contains duty status reports (Form CA-17) from Dr. Busch dated April 4, 2014 and February 27, 2015 limiting appellant to eight hours of work per day, four days per week with restrictions.

On March 27, 2015 appellant was seen by Dr. Busch for bilateral knee pain complaints and was diagnosed with knee joint pain and knee osteoarthritis. A physical examination of both knees revealed no visible abnormalities and pain with extension and flexion. Dr. Busch released appellant to return to modified sedentary work.

On April 24, 2015 appellant was seen for bilateral knee pain and increased left hip pain complaints by Dr. Busch. Dr. Busch reported no visible bilateral knee abnormalities, bilateral knee pain with extension and flexion, and full left hip range of motion. Diagnoses included knee osteoarthritis and left hip trochanteric bursitis. Dr. Busch indicated that appellant was capable performing sedentary work.

Dr. Busch, in an April 28, 2015 report, released appellant to sedentary work.

By letter dated May 27, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim for a recurrence of disability beginning March 26, 2014. It advised her as to the definition of a recurrence and the evidence required. Appellant was afforded 30 days to provide the requested information.

In a June 19, 2015 report, Dr. Busch reiterated diagnoses and findings from his prior reports.

By decision dated June 30, 2015, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish that her accepted conditions had worsened.

In a letter dated July 9, 2105, counsel requested an oral hearing before an OWCP hearing representative, which was held on September 16, 2015.

In a July 31, 2015 report, Dr. Busch diagnosed knee joint pain and knee osteoarthritis. Appellant stated that her condition was due to her January 8, 2012 employment injury. A physical examination of both knees revealed no visible abnormalities and pain with extension and flexion. Dr. Busch noted that, prior to the January 8, 2012 fall, appellant had no knee issues. He opined that her current symptoms were due to an exacerbation of her preexisting bilateral knee osteoarthritis from the employment injury. Dr. Busch indicated that appellant was capable of working in a sedentary position.

On August 28 and September 25, 2015 appellant was seen by Dr. Busch for bilateral knee pain. Dr. Busch observed no visible abnormalities, but noted that appellant had pain with extension. He diagnosed knee joint pain and knee osteoarthritis. Dr. Busch indicated that appellant was capable of sedentary work.

On September 15, 2015 OWCP received reports from Dr. Busch covering the period January 13, 2012 to September 11, 2015, noting that appellant was capable of working a sedentary position. Diagnoses included knee joint pain, knee osteoarthritis, and patellofemoral syndrome, and left hip trochanteric bursitis.

By decision dated November 4, 2015, OWCP's hearing representative affirmed the denial of appellant's recurrence claim. She found the medical evidence insufficient to establish that appellant's accepted conditions had worsened on March 26, 2014. The hearing representative further found that appellant's work hours had been altered based on her own request and not due to worsening of her accepted conditions.

In a December 18, 2015 report, Dr. Busch reported that appellant was seen for bilateral knee pain. He diagnosed knee osteoarthritis and an antalgic gait. Dr. Busch indicated that appellant was capable of working a sedentary job.

On February 12, 2016, appellant, through counsel, requested reconsideration and submitted a September 11, 2015 letter from Dr. Busch.

In the September 11, 2015 letter, Dr. Busch noted that appellant has been in his care since January 2012, for patellofemoral syndrome and bilateral knee osteoarthritis, which became symptomatic following the January 2012 work injury. He further noted that appellant had worked as a nurse for the employing establishment for 26 years at the time of her accepted 2012 fall at work. Dr. Busch explained that clinical examination, along with x-rays, and magnetic resonance imaging (MRI) scan evaluation, demonstrated severe osteoarthritis of the left knee, osteoarthritis of the right knee, and patellofemoral syndrome of both knees. He related that appellant had been treated conservatively with physical therapy, knee brackets, steroid injections, synvisc injections, pain medication, tramadol, and ice application. As these treatments had failed, Dr. Busch now recommended total knee replacement.

Dr. Busch further related that he had examined appellant on April 4, 2014. Based on his examination, on that date, he had determined that appellant could only work eight hours per day four days a week instead of five days per week. Due to the worsening of her condition, Dr. Busch opined that appellant sustained a recurrence of disability on March 26, 2014. He also explained that appellant currently used a cane to walk as her instability and crepitus had increased when she moved from a sitting to standing position. Appellant had increased bilateral knee swelling and pain. Dr. Busch restricted her to sedentary work on January 23, 2015 with a maximum of one hour standing, a maximum of one hour walking, and seven to eight hours of sitting. He opined that the January 8, 2012 employment injury caused a permanent aggravation of the underlying bilateral knee osteoarthritis.

By decision dated February 19, 2016, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative, and substantial evidence, a

recurrence of disability and to show that he or she cannot perform such light duty.<sup>4</sup> As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>5</sup>

A recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup> The Board has held that whether a particular injury causes an employee to be disabled for work is a medical question that must be resolved by competent and probative medical evidence.<sup>7</sup> The weight of medical opinion is determined on the report of a physician, who provides a complete and accurate factual and medical history, explains how the claimed disability is related to the employee's work and supports that conclusion with sound medical reasoning.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained bilateral knee contusion and right hip contusion on January 8, 2012. Appellant returned to full-time limited-duty work following the injury. She subsequently filed a claim for a recurrence of disability for wage loss commencing March 26, 2014. The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of partial disability commencing March 26, 2014.

Appellant returned to modified work on January 17, 2012 working eight hours per day, five days per week. On March 26, 2014 she claimed that her knees gave out while she was rising from a chair. Appellant alleged that her knee condition had worsened such that she was no longer able to work eight hours per day five days a week. She did not allege a change in her light-duty job requirements. Therefore, appellant has the burden of proof to establish that she cannot perform such light duty. As part of this burden, she must show a change in the nature and extent of the injury-related condition.<sup>9</sup>

Appellant submitted numerous reports from Dr. Busch in support of her recurrence claim. As Dr. Busch explained that he had treated appellant for her knee conditions since her January 8, 2012 accepted injury. In multiple reports, he indicated that appellant was capable of performing sedentary work, but as of March 26, 2014 for only four days a week. In reports dated April 4 and August 8, 2014, Dr. Busch noted bilateral knee medial joint line tenderness, right knee trace effusion, left knee swelling, and mild left knee effusion full right knee range of motion, 0 degrees left knee extension, and 125 degrees flexion. He concluded that appellant was only

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<sup>4</sup> K.C., Docket No. 08-2222 (issued July 23, 2009); *Richard A. Neidert*, 57 ECAB 474 (March 10, 2006).

<sup>5</sup> C.S., Docket No. 08-2218 (issued August 7, 2009); *Joseph D. Duncan*, 54 ECAB 471 (2003); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> 20 C.F.R. §10.5(x). *See S.F.*, 59 ECAB 525 (2008); *Albert C. Brown*, 52 ECAB 152 (2000); *Terry R. Hedman*, *id.*

<sup>7</sup> *See R.C.*, 59 ECAB 546 (2008); *Carol A. Lyles*, 57 ECAB 265 (2005); *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>8</sup> *See C.S.*, *supra* note 5; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>9</sup> *Supra* note 6.

capable of working eight hours per day, four days per week in a sedentary position due to a permanent aggravation of her preexisting conditions. Dr. Busch, in a September 11, 2015 report, explained that her instability and crepitus had increased when changed from a sitting to standing position and she used a cane to ambulate, and diagnosed osteoarthritis and patellofemoral syndrome of the knees and left hip trochanteric bursitis. He also observed an increased bilateral knee swelling. Dr. Busch noted that he provided appellant work restrictions monthly. He reiterated that, based on his April 4, 2014 examination, appellant was only capable of working eight hours per day, four days a week. Dr. Busch concluded that the reduction in work hours was caused by a worsening of her condition and, thus, she had sustained a recurrence of disability on March 26, 2014.

Although Dr. Busch related that appellant should only work four days a week, rather than five, he failed to provide medical rationale explaining why appellant's accepted bilateral knee and right hip contusions, caused her disability after March 26, 2014. Rather, Dr. Busch related that appellant was disabled due to degenerative conditions which were not accepted as caused by the employment injury. He did not sufficiently explain how the slip and fall at work on January 8, 2012 would cause the additional conditions he diagnosed of patellofemoral syndrome and bilateral knee osteoarthritis.

Dr. Busch's opinion does not support a spontaneous recurrence of appellant's accepted knee and hip contusions. Rather, the opinion suggests that appellant's employment injury caused additional conditions.<sup>10</sup> He correlated in general terms that appellant's conditions were caused by the work injury. However, generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale explaining how the accepted injury actually caused the additional conditions.<sup>11</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden of proof to disprove such a relationship.<sup>12</sup> Accordingly, the Board finds that Dr. Busch failed to provide a sufficiently rationalized medical opinion explaining why appellant was totally disabled commencing March 26, 2014 due to a worsening of her accepted conditions or to any additional conditions which were causally related to the accepted injury.<sup>13</sup>

The Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>14</sup> or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.<sup>15</sup> Dr. Busch did not address causal relationship between the claimed partial

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<sup>10</sup> 20 C.F.R. § 10.5(x). OWCP's implementing regulation defines a recurrence of disability as an inability to work, after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.

<sup>11</sup> *L.M.*, Docket No. 16-0188 (issued March 24, 2016); *K.W.*, Docket No. 10-98 (issued September 10, 2010).

<sup>12</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>13</sup> *P.P.*, Docket No. 16-1232 (issued December 23 2016).

<sup>14</sup> *Robert G. Morris*, 48 ECAB 238-39 (1996); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>15</sup> *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

disability commencing March 26, 2014 and the accepted employment injuries.<sup>16</sup> For the above stated reasons, the Board finds that his reports are insufficient to establish appellant's claim.

On appeal counsel argues that the medical and factual evidence submitted by appellant establishes that her partial disability beginning March 26, 2014 was causally related to her accepted January 8, 2012 employment injury. As discussed above, the Board found Dr. Busch's reports insufficient to establish that appellant's recurrence of partial disability was casually related to her accepted bilateral knee and right hip conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds appellant has not established that she sustained a recurrence of disability on March 26, 2014 causally related to her January 8, 2012 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 19, 2016 is affirmed.

Issued: March 6, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> See *D.B.*, Docket No. 13-717 (issued July 24, 2013); *Sandra D. Pruitt*, 57 ECAB 126 (2005).